

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RED BULL NORTH AMERICA, INC. AND
RED BULL CMBH LIMITED LIABILITY
COMPANY,

Plaintiffs,

-v-

ANSWER

Civil Action No.: 07CV6112T(P)

SOHO EAST AVENUE INC., 289 ALEXANDER
STREET INC., DAVIS COWDEN INC., 336
DUKES INC., RDCUSE INC. AND RONALD A.
DAVIS,

Defendants.

The defendants, Soho East Avenue Inc., 289 Alexander Street Inc., Davis Cowden Inc., 336 Dukes Inc., RDCUSE Inc., and Ronald A. Davis, through their attorneys, Redmond & Parrinello, LLP, for their answer to the plaintiff's Summons states as follows (the paragraph numbers in this Answer correspond to the numbered paragraphs in the Plaintiff's Complaint):

NATURE OF THE CASE

JURISDICTION AND VENUE

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

PARTIES

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

5. Admits allegations contained in this paragraph of Plaintiff's Complaint.
6. Admits allegations contained in this paragraph of Plaintiff's Complaint.
7. Admits allegations contained in this paragraph of Plaintiff's Complaint.
8. Admits allegations contained in this paragraph of Plaintiff's Complaint.
9. Admits allegations contained in this paragraph of Plaintiff's Complaint.
10. Admits that portion of this paragraph of Plaintiff's Complaint referring to the fact that Defendant Davis is a citizen of New York and principal of the remaining Defendants. Denies all other allegations contained in this paragraph of Plaintiff's Complaint.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

Red Bull NA Warns Defendants Against Passing Off

16. Denies knowledge or information sufficient to form a belief as to whether Defendant Davis met with Mr. Martinez and Mr. Dicataldo. Denies the remaining allegations in said paragraph.

Defendants Pass Off Despite Warnings

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

Red Bull NA Again Warns Defendants Against Passing Off

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

Passing Off Continues in July 2005 Despite Multiple Warnings

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

Passing Off Continues Through the End of 2005 Despite Multiple Warnings

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

Red Bull NA Again Warns Defendants Against Passing Off

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

Passing Off Continues Despite Repeated Warnings

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

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51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

COUNT I

Unfair Competition in Violation of Section 43(a) Of the Lanham Act, 15 U.S.C. §1125(a)

57. Defendant repeats and realleges answers to paragraphs 1-56 as set forth above.

58. Denies allegations contained in this paragraph of plaintiff's Complaint.

59. Denies allegations contained in this paragraph of plaintiff's Complaint.

60. Denies allegations contained in this paragraph of plaintiff's Complaint.

61. Denies allegations contained in this paragraph of plaintiff's Complaint.

62. Denies allegations contained in this paragraph of plaintiff's Complaint.

63. Denies allegations contained in this paragraph of plaintiff's Complaint.

COUNT II

**Trademark Infringement in Violation of Section 32(1)
Of the Lanham Act, 15 U.S.C. §1114(1)**

64. Defendant repeats and realleges answers to paragraphs 1-56 as set forth above.

65. Denies allegations contained in this paragraph of plaintiff's Complaint.

66. Denies allegations contained in this paragraph of plaintiff's Complaint.

67. Denies allegations contained in this paragraph of plaintiff's Complaint.

68. Denies allegations contained in this paragraph of plaintiff's Complaint.

69. Denies allegations contained in this paragraph of plaintiff's Complaint.

COUNT III

**Unjust Enrichment in Violation of
New York Common Law**

70. Defendant repeats and realleges answers to paragraphs 1-56 as set forth above.

71. Denies allegations contained in this paragraph of plaintiff's Complaint.

72. Denies allegations contained in this paragraph of plaintiff's Complaint.

73. Denies allegations contained in this paragraph of plaintiff's Complaint.

COUNT VI

**Unfair Competition Under
New York Common Law**

74. Defendant repeats and realleges answers to paragraphs 1-56 as set forth above.

75. Denies allegations contained in this paragraph of plaintiff's Complaint.

76. Denies allegations contained in this paragraph of plaintiff's Complaint.

77. Denies allegations contained in this paragraph of plaintiff's Complaint.

AS AND FOR DEFENDANT'S
FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state facts sufficient to constitute a claim on which relief may be granted.

AS AND FOR DEFENDANT'S
SECOND AFFIRMATIVE DEFENSE

Plaintiff's mark, although registered previously, has passed into the public domain through popular usage.

WHEREFORE, Defendant respectfully requests an order dismissing the Plaintiff's Complaint along with costs, disbursements, reasonable attorneys' fees and such other relief as the Court deems just and proper.

Dated: April 16, 2007
Rochester, New York

s/J. Matthew Parrinello
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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2007, I electronically filed the foregoing Answer with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Michael J. Masino, Esq.

Hon. Michael A. Telesca

s/Ashley Freeman